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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

August 9, 1991

Ms. Cynthia P. Hill
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P.O. Box 2888
Corpus Christi, Texas 78403

OR91-361

Dear Ms. Hill:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12183.

We have considered the exceptions you claimed, sections 3(a)(1), (2), and (11), specifically, and have reviewed the documents at issue. Section 3(a)(2) exempts

(2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and transcripts from institutions of higher education maintained in the personnel files of professional public school employees; provided, however, that nothing in this section shall be construed to exempt from disclosure the degree obtained and the curriculum on such transcripts of professional public school employees,

Under this section, you may withhold the information on the higher education transcripts of professional public school employees, except for the employee's name, the degree obtained, and the courses taken. See Open Records Decision No. 526 (1989). However, section 3(a)(2) does not apply to any of the other materials you have submitted to us. Prior case law and opinions of this office have established that information must be within common law or constitutional privacy law for its disclosure to be a "clearly unwarranted invasion of personal privacy." *Hubert v.*

Harte-Hanks Newspapers, 652 S.W. 2d 546, 550 (Tex. App--Austin, 1983, writ ref'd n.r.e.); ORD No. 467. The material you seek to withhold does not meet this test.

You assert your 3(a)(1) claim against disclosure of documents within exhibits B through V.¹ Most of the information for which you have claimed the 3(a)(1) exemption is not within that exception's protection of common-law or constitutional privacy, for the reasons discussed above in relation to section 3(a)(2). *See* Open Records Decision Nos. 284 (1981)(teacher service records, school district employment contracts, applications for employment, teacher certificates); 41 (1974) (school district employees' salaries); 455 (1987) (resumes); 441 (1986)(teacher examination scores). However, section 3(a)(1) does apply to documents within exhibits B and V. Article 4495 (b) section 5.08, V.T.C.S. makes confidential records "of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a created or maintained by a physician." As the certification of examination of school personnel for tuberculosis in exhibit B is a record created by a physician, you may withhold it. Likewise, you may withhold the documents in exhibit V titled "Physical Examination Report (the Report)." These reports consist of medical history records, filled out by the patient; and records of the physician's examination, created by the physician. It is obvious that both parts of the Report comprise records maintained by a physician, and so are exempt from disclosure under article 4495b and section 3(a)(1) of the Open Records Act. *See* Attorney General Opinion JM-229 (1984).

We now address your claims under section 3(a)(11). This office has interpreted section 3(a)(11) to protect inter- or intra-agency advice, opinion, or recommendation used to aid the decision-making process. ORD No. 582 (1990). Factual information is outside the coverage of section 3(a)(11). *Id.* We find some of your claims under this section to be valid, but most of them to be outside the scope of this exception.

In Exhibit L, we agree that the specific ratings on the teacher career ladder records may be withheld, but we do not find the exception applicable to the letters

¹ We note that you failed to accompany your claim with any supporting argument or legal reference. Normally, this office will not consider a governmental body's request for a determination absent a demonstration of how specific information fits within a particular exception. *See, e.g.,* Open Records Decision No. 542 (1990). In the case of discretionary exemptions, the governmental body's failure to fulfill this duty will result in a presumption that the pertinent information is open. *Id.* We request that in the future you accompany your claims for exception with specific supporting arguments.

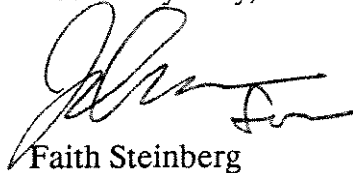
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informing teachers of placement decisions about them. These documents appear to be completed form letters, and any "opinion" expressed in them is neither an individual assessment nor intended for use in decision-making. Exhibit Q consists almost entirely of factual information, with a few exceptions, which we have marked. Exhibit T consists of a letter informing school employees of their reassignment, a final action and statement of fact not within section 3(a)(11). *See Id.* Neither does Exhibit U, a letter from a teacher requesting reassignment and urging his qualifications in the process, fall within this section. We have marked those portions of the materials that you may withhold.

Finally, you have raised section 3(a)(17) in regard to the home addresses and telephone numbers of those employees who have opted to have this information kept confidential under the procedure set out in section 3(A) of the Act. We agree that you may withhold such information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-361.

Yours very truly,



Faith Steinberg
Assistant Attorney General
Opinion Committee

FS/JS/lb

Ref.: ID# 12183

Enclosure: Open Records Decision Nos. 582, 467.

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